UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NORTH TEXAS INVESTMENT GROUP d/b/a WHITEHAWK WORLDWIDE		
and	Case	28-CA-265119
GUILLERMO HERNANDEZ, JR., an Individual		
and	Cases	28-CA-265886
		28-CA-266125
INTERNATIONAL UNION, SECURITY, POLICE		28-CA-266131
& FIRE PROFESSIONALS OF AMERICA		28-CA-267073
(SPFPA)		28-CA-267733

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for the Charging Party
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DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried virtually via Zoom audio-visual technology on May 4 to 7, 2021. The final amended consolidated complaint alleges that the North Texas Investment Group d/b/a Whitehawk Worldwide (the Respondent) violated: (1) Section 8(a)(1) of the National Labor Relations Act (the Act)[1] by engaging in a series of actions in 2020 interfering with the rights of its employees to engage in union and other protected concerted activities; (2) Section 8(a)(3) and (1) by discharging employees Angel Aniles and Silvia Soto, and subsequently filing a meritless civil lawsuit against Soto, because they engaged in union and other protected concerted activities; (3) Section 8(a)(4) and (1) because Soto cooperated in Region 28's investigation into unfair labor practices against the Respondent; and (4) Section 8(a)(5) and (1) by failing and refusing to bargain collectively and in good faith with the International Union, Security, Police & Fire Professionals of America (SPFPA) (the Union), the exclusive collective-bargaining representative of its employees.

[1] 29 U.S.C. §§ 151-169.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent and Charging Parties, I make the following

FINDINGS OF FACT

JURISDICTION

The Respondent, a corporation, with an office and place of business in El Paso, Texas, has been engaged in providing security services for Comprehensive Health Services, Inc. (CHS) under contract with the U.S. Department of Health and Human Services Office of Refugee Resettlement (HHS). In conducting such operations during the 12-month period ending August 24, 2020, the Respondent performed services to the United States government valued in excess of $50,000, and purchased and received at its facility goods and materials valued in excess of $5,000 directly from points outside of Texas. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Operations

The Trail House Shelter (Trail House) in El Paso, Texas is an HHS facility managed and operated by CHS, a for-profit medical management services provider, under contract with HHS. In February, CHS awarded the Respondent a contract, retroactive to October 1, 2019, to provide security services at Trail House. The base year expired on September 30. The 1st Option Year began on October 1, and expires on July 31, 2021. The 2nd Option Year begins on August 1, 2021 and run through July 31, 2022. Any benefits or wage changes must be submitted prior to the beginning of a new option year, and take effect on the first day of the option year. Employee wages and benefits are required to be approved by HHS, including those for option years.

The Respondent employs approximately 130 employees at Trail House, with approximately 20 security officers on duty at any given time. Officers are divided into three shifts – day shift, also referred to as first shift, swing shift, also referred to as second shift, and graveyard shift, also referred to as third shift. A senior shift supervisor has overall supervision of Trail House security employees. They oversee general operations, including uniform, disciplinary, scheduling, staffing, hiring and termination, administrative duties, timesheets, time keeping, and other administrative duties. Shift supervisors and shift leads report to the senior shift supervisor.

Each shift has a shift lead, who receives a nominal increase in wage, and the additional responsibility of maintaining the shift's security log, and receiving any communications from CHS which may come in while the site supervisor is off-duty. In the event of an emergency or a disciplinary issue, it is the shift lead's responsibility to contact the site supervisor or the vice

president for human resources, who will then provide further instructions about how the officers on shift should proceed.

At the material times, the following individuals held statutory supervisory positions: Daniel Griffith – chief executive officer; Alton Rudin – vice president, human resources;[2] William Gandy – program manager; and Gabriel Vasquez – senior shift lead. Angel Aniles and Silvia Soto were hired as security officers in April and May, respectively. Soto previously worked with Vasquez's predecessor as site supervisor, Guillermo Hernandez.

Rudin makes the vast majority of decisions about employee discipline, often in consultation with the site supervisor and is involved in all hiring and discharge decisions. Decisions relating to employee lawsuits are made by Griffith.

The Respondent requires its Trail House employees to fill out paper timesheets each week. Employees take their timesheets to the site supervisor's office and drop them off in an unlocked filing cabinet. They do not get copies of their timesheets. The site supervisor is responsible for submitting all timesheets to the Respondent's human resources office.

B. The Union Organizing Campaign

The Union began organizing the employees at Trail House in June. Interested employees were provided with union membership and authorization forms. Some were provided the forms while on duty. David Subia and Soto were the primary union organizers and distributed most of the forms to coworkers in June or July.[3] Some employees also received authorization cards from Vasquez before he was promoted to site supervisor in August. Vasquez knew of Soto's union activities. Aniles, on the other hand, did not sign a union authorization card and was not an active union supporter.

By July 17, approximately 20 of the Respondent's 24 employees at Trail House signed union membership and authorization forms constituting the following appropriate unit and designating the Union as their exclusive collective-bargaining representative for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time armed and unarmed security officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, employed by [Respondent] at the Department of Homeland Security migrant family care center El Paso, Texas; excluding all office clerical employees, professional employees and supervisors as defined by the Act.

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[2] Rudin was not a credible witness. Much of his testimony was evasive and inconsistent with his prior statements in sworn Board affidavits. As the Respondent's designated custodian of records responsible for the production of subpoenaed information by the General Counsel, Rudin failed to produce text messages and emails which he repeatedly referred to during testimony. He also deleted relevant text messages during the pendency of these cases.

[3] There is no evidence to refute Rudin's testimony that he lacked direct knowledge of Soto's union activities prior to August. (Tr. 196, 202.)

On July 20, employee Jerry Aguero sent the following email to Hernandez, copying Rudin. The subject was "unions":

> [H]ello Supervisor Hernandez:
>
> it is feasible to join two unions. Unions are tied to a place if employment,or occupation in some cases, so if you work in two different places, and both work forces are represented by a union, then you are in two different unions.
>
> At the moment, there is no statutory prohibition preventing a person from belonging to more than one trade union and a person is at liberty to belong to more than one trade union.[4]

Rudin asked Hernandez why Aguero sent the email, but Hernandez replied that he did not know. Unbeknown to Rudin at the time, Hernandez secretly supported the union effort.

On July 30, the Union filed the representation petition that was received by the Respondent sometime after August 4.[5] On August 3, the Union, petitioned in Case 28-RC-264073 that the Respondent voluntarily recognize it as the employee unit's bargaining representative.[6] The Respondent declined.

C. *Aniles' Termination*

On August 10, Vasquez replaced Hernandez as the lead or site supervisor. On August 15, he was home when he got a call about Aniles's conversation with another employee. Vasquez then called Aniles while he was still on duty and berated him about violating his prohibition against employees' discussing workplace issues with anyone but him. Aniles raised his voice as the two proceeded to argue and Aniles refused Vasquez's directive to go home. In an email report about the incident to Rudin on August 17, Vasquez described the sequence of events as follows:

> At approximately 2300 hours [on] 8/15/2020, I received a call from security officer Castro advising me that he overheard security officer Aniles telling officer Gilberto Vargas that he needs to call Mr. Rudin over his schedule, completely undermining what I had previously briefed him and all security staff to follow chain of command, I security officer Vasquez proceeded to call team lead Olivas and asked him to ask Mr. Aniles to contact me. As soon as Mr. Aniles contacted me I asked him if he had any issues with the

[4] The vague circumstances relating to the origin of the email were suspicious given Rudin's self-serving written comments on the email copy. (R. Exh. 25.)

[5] I credited Aniles' spontaneous, consistent testimony over Vasquez's version of the events on August 15. Vasquez's hedged when asked to explain Aniles' insubordination and sidestepped the issue raised by Aniles – Vargas' right to contact Rudin about his scheduling concerns. More importantly, his credibility in general was diminished when he denied ever speaking to other employees about the organizing campaign. As stated, infra, the credible evidence established that he became Rudin's anti-union enforcer after the representation petition was filed. (Tr. 269-71, 291-93, 317-20.)

[6] GC Exh. 25.

> way I scheduled Mr. Vargas shifts to which he replied "I was under the impression that Mr. Rudin did not want us working more than 16 hour shifts" to which I replied that I have not been informed of such policy and if Mr. Vargas has an issue with his schedule he should have contacted me so I could make the proper changes, but when I spoke to him about it he was fine with it and was willing to work the shifts do to the situation we are in at the moment and so he can get as close as possible to his 40 hours. At this time I proceeded to ask him to stop undermining me and my decisions as Senior shift lead. At this time Mr. Aniles began to raise his voice at me and demanding for me to listen to what he is telling me, at this time I asked Mr. Aniles to leave the post and go home. As I asked him to go home he replied to me that he was not going to leave the site and he was going to finish his shift and was not going to listen to me. And that he was going to call Mr . Rudin. At this time I decided to terminate the call and proceeded to try and contact project manager Robert and Mr. Rudin to advise them of the situation. No one was available at this time.[7]

Rudin followed-up by calling Aniles and notifying him that he was suspended without pay. At that time, Rudin told Aniles that Robert Copeland from the Respondent's operations division would investigate and determine whether or not to terminate Aniles. During that conversation, Rudin shared his awareness that Hernandez and Subia passed out the union membership and authorization cards.[8] After arriving home, Aniles continued his discussion with Rudin by text, attaching pictures of those forms in the process:

> Yes that is correct except 2nd shift team lead Vasquez was the one who showed the officers how to fill them out and get them sent out. Gilbert Vargas has mention this to me and fears Vasquez is trying to get rid of him by giving him a schedule he doesn't want and for hours that were forced upon him to do. Vargas has been working in a hostile environment and was afraid management/you would fire him for the 16hr shift he was told to do Saturday. He didn't know what to do so I told him to do both shifts and Monday morning for him to call you and ask/talk while I would translate.[9]

On August 21, Rudin notified Aniles in an emailed letter that he was discharged and not eligible for re-hire. The "Reason for Action" cited insubordination, violation of rules, instigating/participating in disturbance, rudeness/discourtesy and "Other: Had been involved in 2 investigations as an accused for sexual harassment 4/27/20 and 5/2020 participating in a disturbance with another officer (verbal altercation that almost became physical)."[10]

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[7] GC Exh. 21.

[8] Rudin's comment in the text message that Hernandez and Subia passed around the forms was inconsistent with his Board affidavit stating that Aniles volunteered that information. (GC Exh. 39 at 16.)

[9] There is no evidence that Rudin was aware of Aniles' support for the Union. (Tr. 202, 300, 316-20; GC Exh. 40-41.)

[10] The statement that Aniles "almost became physical" with another officer on August 15 was an exaggeration. Moreover, reports by officers in Aniles' vicinity at the time of his conversation with Vasquez would not have been able to hear the latter berating Aniles. (GC Exh. 14.)

Although the reference in Aniles' discharge to his instigating or participating in a disturbance could be attributed to his heated exchange with Vasquez, Aniles was no longer around when Vargas nearly got into a fight with Vasquez the following evening.[11]

D. Timesheet Irregularities

Around July 14, Rudin emailed employee Gabriel Herrera about two "completely different timesheets submitted in different handwriting. So I sent both time sheets back to [Hernandez]. I am going to assume that he has been completing timesheets for everyone and not the individual officers. That's a bad practice and against DOL rules if it were ever called into question, if that's [what has] been happening."

Within the next several weeks, Rudin's concerns about the company being caught violating Department of Labor rules for "bad practice" relating to timesheets changed significantly. Rather than returning problematic timesheets to Hernandez, Rudin eventually "investigated" three unit employees – Soto, Herrera and Gloria Rodriguez. Rudin notified Rodriguez and Herrera of the investigation and interviewed both of them. Neither he nor Vasquez notified Soto that Rudin was looking into her timesheets. Rudin ultimately took no action against either Herrera or Rodriguez. On August 11, the Respondent discharged Hernandez based on allegations of stealing company time, submitting fraudulent timecards, and falsifying employee timecards.[12]

E. Soto's Termination

Soto regularly worked the 7 a.m. to 3 p.m. shift. She worked her regular shift on July 20. On July 23, she called and told Subia she was sick and would not report to work. On July 27, her next day on the schedule, she informed Hernandez when she left work after two hours for COVID testing. Between July 30 and August 1, Soto went to work one hour each day before leaving for medical reasons. She told Hernandez each time and he completed her time sheet for those days as if she attended her full shift. Soto did not attempt to return to work until August 13.

Soto spoke with Vasquez on August 11. Vasquez told Soto that he was making the schedule and would let her know if she would be scheduled to work on August 13. Vasquez never got back to Soto since Rudin was already aware of her union activities and motivated to eliminate her from the Trail House workforce as a result.[13]

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[11] GC Exh. 44.

[12] The handwritten notes were added "well after the date" of the email. (GC Exh. 28-30; Tr. 99-100, 112-13, 117-20, 405.)

[13] Soto was not a very credible witness. While it is clear that she did not make the timesheet entries during the period of July 23 to August 1, her selective memory and partial explanation regarding her attendance during that period strongly suggests complicity in Hernandez's completion of her timesheets during that period. Equally as disturbing was Soto's failure to explain why Hernandez completed her timesheet for the period of July 5 to 11 if she worked her full schedule during that time. (Tr. 397-407, 411-14; GC Exh. 9.)

On August 12, Rudin asked Soto in a text message "when was the last day you worked a shift? Beginning of July mid July?" After Soto replied that she last worked on August 1, Rudin asked why she was not working. Soto explained that she told Hernandez on August that she needed a few days off because she had been sick and also had a family emergency. She also asked if she was still on the schedule for the following day since she had not heard from Vasquez.

Soto did not hear back from Rudin and, on August 18, filed a claim for unemployment compensation. Rudin replied on August 21:[14]

> Ms. Soto, we received an unemployment claim on you today. We had not terminated your employment [sic] we were investigating you for theft of time for turning in time sheets for hours you did not work. Therefore, by receiving this unemployment claim we are assuming you have quit and we will remove you from our unemployment rolls. Good luck.

Soto replied shortly thereafter that she was removed from the schedule without notice and never notified about an investigation. She insisted she filed for unemployment benefits only because she had been removed from the schedule. Rudin replied that Soto had not worked "since around the middle of July and had time sheets submitted saying you had been working. Officers stated that you had not been there. So when you called [Vasquez] asking when you could go back on the schedule around the 10-12th of this month I wanted to know why you had not been working."[15] On the same day, Rudin generated a report indicating that the "action taken" against Soto was a counseling based on violation of rules, falsification of records and being under investigation for theft of time and services.[16]

On August 26, Vasquez and Rudin solicited statements about Soto's alleged theft of time and timesheet falsification for the first time. Vasquez solicited these statements from employees, at Rudin's behest.[17] Rudin did not notify Soto that he was opening an investigation or ask to interview her. Rudin obtained statements from the officers assigned to Soto's shifts to establish that she had not been working since between July 15 and July 20, although her name continued to appear on the schedule. All employee statements were collected in email format and were submitted to Vasquez before being forwarded on to Rudin. At that time, Hernandez, the site resources supervisor, would have been the last person to handle Soto's timecards for the weeks of July 20 and July 27 before they were submitted to Human Resources.[18]

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[14] A copy of the unemployment compensation application was not received in evidence. However, Soto did not dispute Rudin's text message that it was filed on August 18 and received by him a few days later on Friday, August 21. (R. Exh. 27; Tr. 66.)

[15] At no time before discharging Soto a second time did Rudin seek to determine whether she was aware of the irregularities with her timesheets. (GC Exh. 42.)

[16] GC Exh. 8.

[17] Rudin also claimed to have opened this investigation in July based upon employee reports of timesheet inconsistencies. However, he did not collect any evidence in this investigation until August 26, five days after Soto's termination. (GC Exh. 12.)

[18] Soto confirmed on cross-examination that she did not work on July 23 to 25 (GC Exh. 12, 28; Tr. 404-05, 412-19.)

Vasquez's solicitation of statements did not end there. On September 10, Subia found it "in [his] best interest" to report contacts by the Union and his refusal to write "a statement reporting harassment and intimidation by [Respondent's] management."[19]

F. The Respondent's Restraints on Union Activities

In August, the Union filed the petition in related Case 28-RC-264073 seeking to represent the employees in the bargaining unit.[20] Prior to his promotion, Vasquez signed a union authorization card. Following his promotion, however, Vasquez changed his position on the organizing campaign, and began to actively oppose unionization at Trail House.

In correspondence with Region 28, Rudin repeatedly cited his military background and combat experience, and his belief that it is important to respond with an aggressive attack when someone comes after you. He made these statements in reference to the ongoing Board proceedings.[21]

On August 10, Rudin sent Robert Copeland to Trail House to terminate Hernandez. While there, he spoke with employees regarding their cares and concerns. Copeland made a second visit to the facility on or about August 22, where he spoke with employees regarding the organizing campaign and collected statements from employees regarding their interaction with the union organizers and supporters.[22]

Around the same time, Rudin corresponded with the Union. He threatened to have the Union's attorney prosecuted, or reported to the bar, characterized all communications from the Union to the employees as harassment, and voiced the belief that all communications from the Union to employees were threatening or menacing. Rudin went on to demand that the Union stop talking to employees altogether, and solicited reports of union communications from employees.[23]

In September, Vasquez brought up the upcoming representation election with employees and declared that the Union was "not welcome." During that meeting Vasquez instructed those employees that they were not to discuss the Union while on duty. Vasquez also showed employees text messages from Rudin instructing him to fire employees if the Union organizing campaign continued to gain traction.[24]

In communicating with employees, Rudin repeatedly disparaged the Union. He repeatedly declared that the Union was bad news, had been the subject of many federal

[19] GC Exh. 22.

[20] GC Exh. 25.

[21] GC Exh. 27.

[22] Copeland testified that he was unaware that there was a union organizing campaign when he went to Trail House on August 10 asking how he could make their jobs better. (Tr. 244-47.) That was not credible. The representation petition had been filed by the Union on July 30 and he was sent back to Trail House on August 22 to collect evidence of alleged union harassment of unit employees. (GC Exh. 20.)

[23] GC Exh. 3-7.

[24] This finding is based on Olivas' credible and undisputed testimony. (Tr. 336-40, 349.)

complaints, and that wages and benefits were not subject to negotiation. In late August, Rudin sent a text message to all bargaining unit employees stating "The Union is bad news and the Union is just going to take all of your money and can't do anything to help you because wages and benefits are set by the prevailing wage and are not open to negotiation."[25]

On September 10, the Respondent contacted Union officials and demanded that they stop harassing the Respondent's employees while they were on duty.[26] On September 11, Rudin text messaged employees that, while employees were free to select the Union as their bargaining representative, it would be futile because their wages and benefits were not subject to negotiation with the Union or any other labor organization.[27]

Sometime in August or September Rudin sent a text message to Trail House employees explaining that a voter list was provided to the Union and complaining about the Union's tactics. The text communication informed employees that wage and benefits could not be changed:

> Next, benefits, this union is misleading you again. This contract is a federal contract. The federal gov't dictates to our company the wages and benefits that you receive. I asked your supervisor to post the govt regulation and the current benefits that you are receiving or have access to receiving. Then i broke it down in easy to terms for you. Your previous supervisor was directed to post this same document back in April and it appears he did not follow directives. These benefits can not be changed. The union cant force the govt to change your benefits. . . . Your govt benefits cant be negotiated at this time. The only thing thats really going to change is that your pay checks will be smaller. You'll be bringing in less pay because the union will be lining their pockets with your money.[28]

In November, Rudin interviewed unit employee Jason Olivas by telephone in relation to Rudin's investigation into alleged employee misconduct at Trail House. During that conversation, Rudin told Olivas that he knew that Olivas was coercing other employees into supporting the Union. Rudin told Olivas that they would not discuss that issue further during the call, but would discuss it further in person, when Rudin visited Trail House.[29]

G. Unfair Labor Practice Charges are Filed

On August 24, Hernandez filed the charge in Case 28-CA-265119 alleging that that the Respondent discharged Soto because of her union activities. Soto actively cooperated in the Region's investigation of that charge. She also cooperated in the investigation of Case 28-CA-265886, which was filed by the Union on September 9, alleging that the Respondent retaliated against Soto for her union activities in violation of Section 8(a)(3) of the Act.[30]

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[25] GC Exh. 2, 7, 26.
[26] GC Exh. 6.
[27] GC Exh. 7.
[28] GC Exh. 26.
[29] While Rudin did ultimately visit the Trail House facility, he and Olivas did not discuss the subject any further during that visit.
[30] The Respondent concedes knowledge of Soto's participation in these investigations.

On September 15, the Union filed the charges in Cases 28-CA-266131 alleging unlawful threats in violation of Section 8(a)(1) and Case 28-CA-266125 alleging the unlawful discharge of Aniles in violation of Section 8(a)(3).

On October 7, the representation election in Case 28-RC-264073 was blocked as a result of the unfair labor practice charges in these cases.

H. *The Civil Lawsuit Against Soto*

On September 21, the Respondent filed a civil lawsuit against Soto alleging that she falsified time sheets and failed to return company property. Soto was personally served a copy of the summons by the El Paso County Sherriff's Office.[31] The Respondent did not sue any other employees who were paid for hours they did not work – including other individuals who were investigated at the same time as Soto.[32]

The complaint sought $8,500 in damages. Soto and Hernandez were alleged to be jointly and severally liable for property damage allegedly committed by Hernandez, misappropriation of company resources by Hernandez, and the alleged falsification of timecards by Hernandez, in which Respondent alleges Soto was an accomplice. Soto did not answer the lawsuit and, as a result, a default judgment was entered against her. Soto has not satisfied that judgment.

I. *Vasquez's December 2020 Directives and Disciplines*

On December 22 and 24, Vasquez issued three nearly identical disciplines to Trail House employees David Castaneda, Gloria Rodriguez, and Mario Sanchez. They were based on the Respondent's Standards of Conduct, which prohibited employees, in pertinent part, from engaging "in any discussions concerning client maters, policies, grievances" with "client employees" or "contractors."[33] In enforcing the rule, Vasquez explained that employees were required to bring all workplace issues directly to him as the site supervisor and that the three employees were being disciplined for sharing information with the security monitors responsible for security compliance issues at Trail House. In the discipline issued to Rodriguez, Vasquez stated:

> It has been brought to my attention that you have been reporting on your fellow co-workers to Crystal, a security monitor. This is in direct violation of company policy 'Confidentiality' no sharing internal company business with a client. It is not an individual employee's place to share company information with client employees. That

[31] Soto did not refute the documentary evidence that a deputy sheriff personally served her with the notice of the civil lawsuit or that a default judgment was entered against her. (GC Exh. 24; R. Exh. 27; Tr. 407-08.).

[32] Notwithstanding the Respondent's contention that there were records identifying employees against whom the Respondent considered filing civil lawsuits, its unjustified failure to produce such evidence warrants a finding that it did not exist. See *Precipitator Svcs. Group, Inc.*, 349 NLRB 797, 800 (2007) (an adverse inference may be drawn against a party that introduces incomplete or altered evidence, especially in response to a subpoena).

[33] R. Exh. 4.

> is what chain of command is in place for. If you are observing an issue with a co-worker, you are to immediately report the instance to your shift supervisor and or the Sr. Shift lead who is Gabe. Telling a client employee that they need to check up on one of our employees because they have been caught sleeping on duty is a violation of policy. This information is to go directly to your shift lead or the sr, shift lead so that the company can deal with the issue. It is not the security monitors duty or jobs to supervise our employees. That is the duty and job of the shift leads and the sr shift lead. If another occurrence of this type is brought to my attention, I will personally discharge you from your position.[34]

LEGAL ANALYSIS

I. SECTION 8(A)(1) ALLEGATIONS

A. *Rudin's Statements of Futility*

Rudin's text messages to employees in August and September warned that wages and benefits are not subject to negotiation. The Respondent stands by the propriety of those remarks on the ground that CHS's contract with HHS prohibited changes to wages and benefits in mid-year.

Rudin denigrated the bargaining process by declaring that wages and benefits were not open to negotiation because they were capped at the rates set by the federal government's prevailing wage schedule. However, there was no evidence that either the HHS contract or CHS contract precluded the Respondent from agreeing to higher wages and benefits than those in the prevailing wage schedule. As such, Rudin's assertions were incorrect. Under the circumstances, Rudin's pronouncements amounted to unlawful statements of futility regarding the bargaining process in violation of Section 8(a)(1) of the Act. See *Federated Logistics & Operations*, 340 NLRB at 266-267 (statement that the selection of the union would be futile as the employees would receive no wage increases until the parties negotiated a contract which could take a long time was unlawful). As the Board explained in *North Star Steel Co.*, 347 NLRB 1364, 1365 (2006), an employer violates the Act by implying to employees "that collective bargaining would be futile because such bargaining would not result in the employees obtaining benefits other than what [the employer] chose to give them[.]" See also *Smithfield Foods*, 347 NLRB 1225, 1230 (2006) (top official's statement that employer was in complete control of future negotiations was unlawful); *Aqua Cool*, 332 NLRB 95, 95 (2000) (statement that employees were unlikely to win anything more at the bargaining table than non-represented employees was unlawful).

B. *Rudin's Statements to Olivas*

The Board applies an objective standard when determining whether an employer's statement unlawfully threatens employees with negative consequences for engaging in protected activities. *Mediplex of Danbury*, 314 NLRB 470, 471 (1994) (statement describing employees at a nearby facility being terminated after striking implicitly threatened employees that the same will happen if they were to engage in a strike). That analysis requires consideration as to whether the statements "reasonably tend[] to interfere with, restrain, or coerce employees in the

[34] GC Exh. 45-47.

exercise of their Section 7 rights." *Empire State Weeklies, Inc.*, 354 NLRB 815, 817 (2009) (statement suggesting that an employee will follow the fate of another employee who was fired for his union activities was unlawful). It does not consider the employer's motivation or the statement's actual effect. *Scripps Memorial Hospital Encinitas*, 347 NLRB 52, 52 (2006) (employer prohibiting employees from talking about the union at the nurses' stations during work hours violated Section 8(a)(1) because other discussions were allowed).

Rudin told Olivas that he knew that Olivas was coercing other employees into supporting the Union. He concluded the conversation by informing Olivas that he would discuss the matter further in person when he visited Trail House again. Rudin did not, however, follow-up that subject or discuss it further. Nevertheless, the damage was done. The fact that Olivas was not personally intimidated by the remark is of no consequence. See *Scripps Memorial Hospital Encinitas*, 347 NLRB 52, 52 (2006) (statement's actual effect is not relevant in determining whether a statement constitutes an unlawful threat of reprisals). By accusing Olivas of engaging in vague and unsubstantiated coercive conduct, Rudin unlawfully broadcast his disapproval for Olivas' union activity and conveyed a clear message of repercussions to follow when Rudin visited Trail House. See *Print Fulfillment Services, LLC*, 361 NLRB 1243, 1243-44 (2014) (context of employer's expression of disappointment after finding out that an employee was a union supporter constituted unlawful threat of unspecified reprisals).

Moreover, Rudin's statements that he knew about, and was investigating, Olivas' union activities, also conveyed the unlawful impression of surveillance in violation of Section 8(a)(1). *Greater Omaha Packing Co.*, Inc., 360 NLRB 493, 495 (2014) (test for determining "whether an employer has created the impression of surveillance is whether the employee would reasonably assume from the employer's statements or conduct that their protected activities had been placed under surveillance.") See also *Sysco Grand Rapids, LLC*, 367 NLRB No. 111, slip op. at 26 (2019) (supervisor's statement to an employee that he knew how the employee voted unlawfully gave the impression of surveillance because supervisor did not inform the employee how he obtained that information); *Flexsteel Industries*, 311 NLRB 257, 258 (1993) (supervisor's statement that he was aware the employee may have initiated the union campaign and passed out authorization cards created an impression of surveillance).

C. *Vasquez's Statements Threatening Discharge*

Vasquez warned unit employees in September that he was going to fire people if they continued to engage in union activities or the election went forward. During one meeting, Vasquez bolstered that warning by displaying text messages from Rudin reinforcing the notion that the warning was not a hollow one. Vasquez's threat of job loss due to such activity was a benchmark Section 8(a)(1) violation. See *Baddour, Inc.*, 303 NLRB 275 (1991) (statement unlawfully warned that union strikers could lose their jobs and be replaced by new permanent workers); *Mediplex of Danbury*, 314 NLRB at 471 (statement unlawfully threatened retaliation in response to protected activity).

D. The Company's Rule Limiting Communications

The General Counsel alleges that the Respondent promulgated and enforced unlawful directives when Vasquez disciplined three employees for communicating with the prime

contractor's employees about workplace issues at the Trail House. The Respondent contends that these disciplines were issued based on a legitimate business justification – the violation of a "confidentiality" rule that prohibits employees from sharing internal company business with clients. See *Motor City Pawn Brokers*, 369 NLRB No. 132, slip op. at 9 (2020) (Board decisively categorized policies prohibiting employee communication with customers and third parties in a way that disparages the company as lawful).

In *Boeing Co.*, 365 NLRB No. 154 (2017), the Board established a new standard for determining whether a facially neutral employer policy, reasonably interpreted, would unlawfully interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. Specifically, the Board held that, when analyzing a facially neutral policy, rule or handbook provision that would potentially interfere with the exercise of rights under the Act, it will evaluate two things: (i) the nature and extent of the potential impact on rights under the Act, and (ii) legitimate justifications associated with the rule. *Boeing*, 365 NLRB No. 154, slip op. at 3. In conducting this evaluation, the Board seeks to balance the employer's asserted business justifications for the policy and the extent to which the policy interferes with employee rights under the Act.

The Board also announced that it would evaluate the work rules based on one of three categories: Category 1 – lawful rules, as reasonably interpreted, that do not prohibit or interfere with the exercise of protected rights or the potential adverse impact on protected rights is outweighed by business justifications; Category 2 – rules warranting individualized scrutiny as to whether they would prohibit or interfere with protected rights, and if so, whether any adverse impact on protected conduct is outweighed by legitimate justifications; and Category 3 – rules that unlawfully prohibit or limit protected conduct, which impact is not outweighed by business justifications. Id. at 3-4. The directive at issue falls into *Being* Category 2, which warrants individualized scrutiny as to whether the rule prohibits or interferes with protected rights, and if so, whether such impact on protected conduct is outweighed by legitimate justifications.

The Board has long held that "employees have a right to discuss among themselves, and with the public, information about their terms and conditions of employment for the purpose of mutual aid and protection." *Motor City Pawn Brokers*, 369 NLRB No. 132, slip op. at 6 (2020) (citing *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565-566 (1978)). The confidentiality rule at hand applies to potentially all types of speech relating to "internal company business," not just the ones that disparage the company. Such a rule, which requires the Respondent's employees to present all their workplace issues to their shift supervisor or senior shift lead, severely limits their Section 7 rights. See *AFSCME Local 5*, 364 NLRB No. 65, slip op. at 2 (2016) (directive categorically stating that employees must present all employee issues directly to one supervisor, unlawfully implied they cannot bring those issues to anyone else); *Kinder-Care Learning Centers*, 299 NLRB 1171, 1172 (1990) (parent company communication rule unlawfully prohibited teacher-employees from talking to customers about the terms and conditions of employment and requiring them to always bring the concerns to Center Director); Cf. *Hyundai Am. Shipping Agency, Inc. v. N.L.R.B.*, 805 F.3d 309, 316 (D.C. Cir. 2015) (language in employee handbook urging them to voice complaints to their supervisors or human resources was neither mandatory nor preclusive of alternatives, and therefore not unlawful).

No plausible, much less reasonable explanation was offered by the Respondent as justification for its prohibition against employees from communicating with the appropriate CHS employees regarding operations at Trail House. The Respondent's standards of conduct policy prohibited employees from engaging "in any discussions concerning client maters, policies, grievances" with "client employees" or "contractors." Clearly, there was no evidence offered remotely suggesting that the type of communication that unit employees had with CHS employees – security compliance issues – tended to damage the Respondent's image with CHS. *Boeing*, supra at 17 ("[w]hen a rule, reasonably interpreted, would prohibit or interfere with the exercise of NLRA rights, the mere existence of some plausible business justification will not automatically render the rule lawful"). As reasonably interpreted, the confidentiality rule enforced by Vasquez on December 22 and 24 violated Section 8(a)(1) by coercing employees engaged in the discussion of a basic term and condition of employment – workplace security.

II. SECTION 8(A)(3) AND (1) ALLEGATIONS

The complaint alleges that Soto and Aniles were discharged because of their union activities. The Respondent denied the allegations and contends that they were lawfully discharged for misconduct. In addition, the Respondent alleges that both would have been discharged even in the absence of their union and/or protected concerted activity.

Under *Wright Line*, the General Counsel has the initial burden of establishing that an employee's union or other protected concerted activity was a motivating factor in the employer's decision to take an adverse employment action against the employee. 251 NLRB at 1089. The elements commonly required to support such a showing are (1) the employee engaged in union or other protected concerted activity, (2) the employer had knowledge of that activity, and (3) the employer harbored animus against union or other protected concerted activity. See *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 5–6 (2019). In *Tschiggfrie Properties*, the Board clarified that "the General Counsel does not *invariably* sustain his burden by producing . . . *any* evidence of the employer's animus or hostility toward union or other protected activity" but instead must produce evidence "sufficient to establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee." Id., slip op. at 8 (emphasis in original). If the General Counsel makes this initial showing, then the burden shifts to the employer to establish that it would have taken the same action even if the employee had not engaged in union or other protected concerted activity. *Wright Line*, 251 NLRB at 1089. However, "where an employer's purported reasons for taking an adverse action against an employee amount to pretext—that is to say, they are false or not actually relied upon—the employer necessarily cannot meet its *Wright Line* rebuttal burden." *CSC Holdings, LLC*, 368 NLRB No. 106, slip op. at 3 (2019).

A. *SOTO'S DISCHARGE*

On August 13, Soto was not placed back on the schedule despite her request to return to work. By significantly reducing Soto's income for an indefinite period of time, causing her to quit and seek alternative employment, the Respondent constructively discharged her. *Consec Security*, 325 NLRB 453, 453 (1998) (reduction of an employee's wages by 25 percent by transferring the employee to a different post established constructive discharge); see also

Alterman Transport Lines, Inc., 308 NLRB 1282, 1293-1294 (1992) (reduction of hours of drivers upon learning of their union activities constituted constructive discharge).

The timing of Rudin's laser focus on Soto's time and attendance records was suspiciously soon after the representation petition was filed, and coincided with Rudin's commission of the aforementioned Section 8(a)(1) violations displaying significant union animus. Soto's constructive discharge was rushed through prior to any meaningful investigation relating to her time and attendance records. While Soto's acceptance of compensation for time that she did not work diminished her credibility, the fact is that Rudin treated her differently from the rest of the employees that Hernandez completed time sheets on behalf of. All of this evidence amounts to strong circumstantial evidence that Rudin, with the representation election looming, learned of Soto's union activities from Vasquez and proceeded to eliminate her from the workforce.

Under the circumstances, the General Counsel established by a preponderance of the evidence that Soto was discriminatorily discharged due to her union activities. Nevertheless, the Respondent contends that it would have taken the same action even in the absence of such activities. As previously explained, Soto was complicit in Hernandez's practice of submitting several time sheets on her behalf in July and August. However, Hernandez did the same thing for other employees, including Rodriguez and Herrera. Neither was suspended, discharged, or sued – an obvious display of disparate treatment. See *Case Farms of North Carolina, Inc.*, 353 NLRB 257, 260-261 (2008) (citing *Robert Orr/Sysco Food Services*, 343 NLRB 1183, 1184 (2004), enfd. mem. 184 Fed. Appx. 476 (6th Cir. 2006) (the Board looks to disparate treatment of certain employees compared to other employees with similar offenses as a factor to infer unlawful motivation to discharge). Yet, the Respondent did not provide any explanation why only Soto was discharged. As such, the Respondent failed rebut the inference of disparate treatment against Soto by showing why Rodriguez and Herrera were not disciplined or discharged for the same infractions. See *Avondale Industries, Inc.*, 329 NLRB 1064, 1066 (1999) (prima facie case of discriminatorily applied discipline not rebutted where employer fails to adequately explain why similar treatment was not applied to other employees for the similar misconduct). Accordingly, Soto's constructive discharge violated 8(a)(3) and (1) of the Act.

B. *Aniles' Discharge*

Rudin discharged Aniles on August 21 after the latter engaged in a dispute with Vasquez. The General Counsel contends that the discharge was discriminatorily motivated based on Aniles' union activity and/or protected concerted activities on behalf of Vargas. Addressing the union-based allegation, in the midst of defending himself for his argument with Vasquez, Aniles sent a text message to Rudin containing photos of blank union authorization cards. At that point, Rudin's anti-union maneuvers were well underway. However, there is insufficient evidence that Rudin suspected or knew about Aniles' union activities. In fact, Aniles declined to sign a union authorization card. While it is plausible that Rudin believed that Aniles supported the Union because he possessed the cards, an equally reasonable assumption is that Aniles was given a blank form which he refused to signed.

On the other hand, it is undisputed that Rudin was aware of Aniles' protected concerted activities on behalf of Vargas. Vasquez was informed that Aniles was speaking with Vargas at work about his schedule, a term and condition of employment. Vargas believed that

management was trying to get rid of him by giving him a harsh schedule, and he consulted with Aniles for advice. Aniles suggested Vargas speak to Rudin about the schedule and offered to interpret for Vargas in speaking to Rudin about that. This is undeniably "concerted activities" for the purpose of "mutual aid or protection" that Section 7 rights confer to all employees.

Upon learning about Aniles' conversation with Vargas, Vasquez called him by telephone and accused him of violating the Respondent's policy requiring any employee with an issue to speak to his/her immediate supervisor. Aniles disagreed and both engaged in a screaming match. Vasquez ended the conversation by ordering Aniles to leave the facility and then informed Rudin. Rudin immediately contacted Aniles and told him that he was suspended without pay.

An employer violates the Act when it disciplines an employee based on the good faith but mistaken belief that the employee engaged in protected activity, or engaged in misconduct in the course of protected activity. *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964); *La-Z-Boy Midwest*, 340 NLRB 80 (2003). Under the *Burnup & Sims* framework, the General Counsel must establish that the alleged discriminatees were engaged in activity protected by Section 7 of the Act, and that the Respondent acted in response to that activity. *Detroit Newspapers*, 342 NLRB 223, 228 (2004). The burden then shifts to the Respondent to establish that it had an honest belief that the employees engaged in the purported misconduct for which they were disciplined or discharged. Id. If the Respondent establishes such a belief, "the General Counsel must affirmatively establish that the employee[s] did not engage in such misconduct or that the misconduct was not sufficiently egregious to warrant discharge." Id.; *Akal Security*, 354 NLRB No. 11 (2009).

Applying *Burnup & Sims*, the sequence of events leading to Aniles' discharge were precipitated by Vasquez's invocation of a policy prohibiting employees from discussing their terms and conditions of employment at work, in this case, Vargas' work schedule. See *K Mart Corp.,* 297 NLRB 80, 83 (1989) (employer cannot lawfully issue an unqualified prohibition against employee discussion of problems connected with working conditions, including work schedules). With the evidence having established that Aniles engaged in protected concerted conduct, the burden shifted to the Respondent to show that it had either a good faith but mistaken belief that Aniles engaged in protected conduct or that Aniles otherwise engaged in misconduct in the course of that conduct. The Respondent had neither good faith nor a mistaken belief about the nature or extent of Aniles' conduct. Nor did it establish that Aniles' recalcitrance rose to a level egregious enough to warrant suspension and then discharge. See *Laguardia Assoc., LLP*, 357 NLRB 1097, 1100 (2011) (conduct of employee loudly demanding and chanting to the supervisor and not immediately heeding instruction to return to work was not egregious enough lose protection of the Act); *Goya Foods of Florida*, 347 NLRB 1118, 1134 (2006), enfd. 525 F.3d 1117 (11th Cir. 2008) (less than a minute of loud shouting inside a supermarket did not warrant a loss of protection where there was no apparent disruption to customers).

Moreover, the shifting and vague reasons cited by the Respondent for discharging Aniles – insubordination, violation of rules, instigating/participating in disturbance, previous sexual harassment charges – were pretextual. See *Lucky Cab Co.*, 360 NLRB 271, 274 (2014) (shifting explanations for adverse action indicates pretextual reasoning). Vasquez initiated a heated discussion when he called Aniles and berated him for discussing Vargas' scheduling concerns. Aniles was not inciting Vargas or any other employee, on that or any other day, to complain about Vasquez. Aniles certainly took it personally when Aniles advocated on behalf of another

employee's scheduling concerns. Under the Act, however, it was not about him; it was about the *employee's* scheduling concerns. Vasquez simply did not want anyone, Aniles included, to go over his head to Rudin or anyone else about workplace issues.

III. SECTION 8(A)(4) ALLEGATIONS

The Board applies a "baseless" and "retaliatory" standard in determining whether a lawsuit was unlawfully brought under the Act. *Ashford TRS Nickel, LLC*, 366 NLRB No. 6, slip op. at 6 (2018), citing *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983) and *BE&K Construction Co. v. NLRB*, 536 U.S. 516 (2002). See also *BE & K Construction Co.*, 351 NLRB 451 (2007) (*BE & K II*) (a lawsuit is objectively baseless if "no reasonable litigant could realistically expect success on the merits").

Applying the "baseless" standard here, I find that a reasonable litigant could have expected success on the merits of the Respondent's lawsuit, and the lawsuit was not baseless. The General Counsel argues that the lawsuit was baseless because the Respondent did not identify any statute and it has not pleaded an essential element of the lawsuit, which is the knowledge or intent to deprive the victim of funds or property. Nevertheless, it is not disputed that falsified timesheets were submitted on Soto's behalf for days that she did not work. She did not attempt to return it, was served with notice of the lawsuit and a defaulted judgment was entered against her. Cf. *Ashford* at 9 (lawsuit deemed baseless because it did not plead any facts that would establish that Union acted with malice and relied on information that did not concern the plaintiff).

While the timing of the lawsuit follows shortly after Soto filed and cooperated in the filing of unfair labor practice charges, that alone is insufficient to prove by a preponderance of the evidence that the Respondent's lawsuit was retaliatory in nature. Two other employees were also investigated for misappropriating the funds but were not sued. However, there is insufficient evidence to establish that they were absent from work on the days that timesheets were submitted on their behalf.

In conclusion, the Respondent's civil lawsuit was filed in an attempt to recover, at the very least, the overpayment of wages to Soto. Since the adverse action was neither baseless nor retaliatory, the Section 8(4) and (1) charge is dismissed.

CONCLUSIONS OF LAW

1. The Respondent, North Texas Investment Group d/b/a Whitehawk Worldwide, is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The International Union, Security, Police & Fire Professionals of America (SPFPA) is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by engaging in the following

conduct:

(a) By coercively telling employees on September 10, 2020 that it would be futile to select the Union as their bargaining representative because their wages and benefits were not subject to negotiation.

(b) By coercively threatening employees in September 2020 that employees would be discharged if they engaged in union activities.

(c) By coercively implying to Jason Olivas in November 2020 that he was under surveillance for his activities in support of the Union and coercively expressing his disapproval for such activities.

(d) By coercively promulgating and enforcing an overly broad confidentiality rule on December 22 and 24, 2020 prohibiting employees from discussing terms and conditions of employment with each other while on duty.

(e) By suspending and discharging Angel Aniles on August 21, 2020 because he engaged in protected concerted activities.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by constructively Silvia Soto on August 13, 2020 because she engaged in concerted protected conduct.

5. The above unfair labor practices affect commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. All other complaint allegations not otherwise found, including the unproven Section 8(a)(5) and (1) allegations, are dismissed.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having discriminatorily discharged employees, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010). In accordance with *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), the Respondent shall also be ordered to compensate Aniles and Soto for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Further, the Respondent shall also be ordered to compensate Aniles and Soto for the adverse tax consequences, if any, of receiving a

lump-sum backpay award and to file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition, we shall order the Respondent to file with the Regional Director for Region 28 a copy of their corresponding W-2 form(s) reflecting the back-pay awards. *Cascades Containerboard Packaging—Niagara*, 370 NLRB No. 76 (2021). We shall also order the Respondent to remove from its files any reference to the unlawful discharges of Aniles and Soto and to notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way. Finally, the Respondent shall be ordered to offer full reinstatement to Aniles and Soto within 14 days from the date of our Order.

Because of the serious nature of the violations and the Respondent's egregious misconduct demonstrated a general disregard for the employees' fundamental rights, I find it necessary to issue a broad Order requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). In addition, a public notice reading shall be required to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices and ensure that employees' rights will be respected in the future. *Evenflow Transportation, Inc.*, 361 NLRB slip op. at 1 (citing *Whitesell Corp.*, 357 NLRB 1119, 1123-24 (2011).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[35]

ORDER

The Respondent, North Texas Investment Group d/b/a Whitehawk Worldwide, El Paso, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively telling employees that it would be futile to select a union as their bargaining representative because wages and benefits are not subject to negotiation.

(b) Coercively expressing disapproval for employees' union activities.

(c) Coercively implying to employees that they are under surveillance for their activities in support of a union.

(d) Coercively threatening employees that they will be discharged if they engaged in union activities.

[35] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Coercively promulgating and enforcing rules prohibiting employees from discussing terms and conditions of employment with each other while on duty.

(f) Disciplining, suspending or discharging employees because they engage in support for the International Union, Security, Police & Fire Professionals of America (SPFPA) (the Union) or other protected concerted activities.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Angel Aniles and Silvia Soto full reinstatement to their former job or, if those jobs no longer exist, to substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Angel Aniles and Silvia Soto whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at the CHS Trail House facility in El Paso, Texas copies of the attached notice marked "Appendix"[36] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and

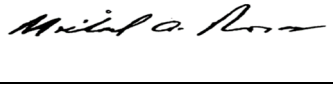
[36] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 10, 2020. Finally, the Respondent shall arrange access for a Board agent to attend the reading of the notice to a meeting of all employees (or by a Board agent in the presence of a management official).

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. July 20, 2021



Michael A. Rosas
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT tell you that exercising the above rights is futile.

WE WILL NOT threaten you with discipline, discharge, or other unspecified reprisals if you form, join, or assist a Union.

WE WILL NOT threaten you with discipline, discharge, or other unspecified reprisals if you select the Union as your exclusive collective bargaining representative.

WE WILL NOT tell you that you must bring your concerted complaints to us and not discuss them with other employees.

WE WILL NOT make it appear to you as though we are watching out for your concerted activities.

YOU HAVE THE RIGHT to choose a representative to bargain with us on your behalf and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT fire you because you exercise your right to form, join, or support a union.

WE WILL offer **SYLVIA SOTO** immediate and full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and/or privileges previously enjoyed.

WE WILL offer **ANGEL ANILES** immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and/or privileges previously enjoyed.

WE WILL pay **SYLVIA SOTO** for the wages and other benefits she lost because we discharged her.

WE WILL pay **ANGEL ANILES** for the wages and other benefits he lost because we discharged him.

WE WILL remove from our files all references to the discharge of **SYLVIA SOTO** and **WE WILL** notify her in writing that this has been done and that the discharge will not be used against her in any way.

WE WILL remove from our files all references to the discharge of **ANGEL ANILES** and **WE WILL** notify him in writing that this has been done and that the discharge will not be used against him in any way.

North Texas Investment Group d/b/a Whitehawk Worldwide

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

2600 North Central Avenue, Suite 1400 Phoenix, AZ 85004-3099

(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/28-CA-265119 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (602) 416-4755.